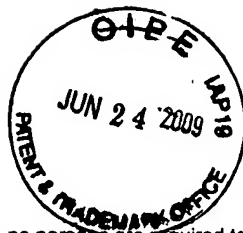


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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) SCS-540-571
	Application Number 10/539,286	Filed June 16, 2005
	First Named Inventor Stacey	
	Art Unit 1791	Examiner Galen H. Hauth

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

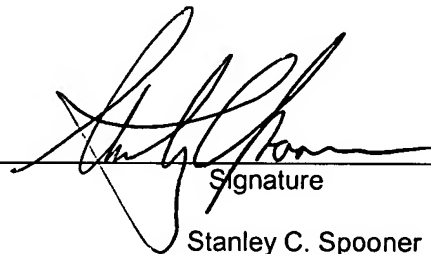
Note: No more than five (5) pages may be provided.

I am the

- ☐ Applicant/Inventor
- ☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

☒ Attorney or agent of record 27,393
(Reg. No.)

☐ Attorney or agent acting under 37CFR 1.34.
Registration number if acting under 37 C.F.R. § 1.34 _____


Signature
Stanley C. Spooner

Typed or printed name

703-816-4028
Requester's telephone number

June 24, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

☒ *Total of 1 form/s are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**STATEMENT OF ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following listing of clear errors in the Examiner's rejection and his failure to identify essential elements necessary for a *prima facie* basis of rejection is responsive to the Final Rejection mailed March 24, 2009 (Paper No. 20090318).

**Error #1. The Examiner fails to provide any rationale
for the rejection of claim 17 under 35 USC §102**

The Examiner rejects claims 8, 13, 17 and 21 under 35 USC §102 as being anticipated by Charbonnet. However, while there is a discussion of claims 8, 13 and 21, there is no allegation or discussion of the subject matter of claim 17. Therefore, the allegation that claim 17 is anticipated by Charbonnet is unsupported and is respectfully traversed.

**Error #2. The Examiner errs in not giving the method
step of dependent claim 21 "patentable weight"**

On page 4, section 3c of the Final Rejection, the Examiner indicates that the limitation "to determine the location and existence of voids during curing" is not given patentable weight. The Examiner misreads claim 21, as the entire quote reads "wherein said method includes the step of monitoring the temperature of the material to determine the location and existence of voids during curing." As claim 21 further limits method claim 13 by reciting an additional method step, i.e., "monitoring the temperature," claim 21 is a proper claim and the Examiner must give patentable weight to all method step limitations contained therein.

This improper claim construction is reversible error and should be withdrawn.

Error #3. The Examiner misapprehends the teaching set out in the Charbonnet reference

A. Independent claims 8 and 13 require “adjusting the temperature of the vessel to maintain a constant curing temperature”

The Examiner alleges that column 3, lines 54-56 of Charbonnet teach that it is “controlling the oven to have a constant cure temperature.” In point of fact, there is nothing in column 3, lines 54-56 which says anything about having a “constant curing temperature” in the Charbonnet vessel. Charbonnet is only concerned with locating and maintaining the gelation point in curing fiberglass reinforced plastic panels. Prior to the gelation point, the panels are mostly liquid and after the gelation point the panels are mostly solid and by definition the gelation point is the point at which polymerization occurs to change from liquid to solid.

The Examiner has been challenged throughout prosecution to demonstrate where or how there is any disclosure in the Charbonnet reference of monitoring temperature of the material and then adjusting temperature of the vessel (not the material) in order to maintain a “constant curing temperature.” The Examiner has ignored the claim language requirements and the fact that Charbonnet teaches only adjusting the infrared heating of the moving panel to maintain the gelation point at a desired location in the process. Charbonnet specifically teaches away from this claim requirement because, in response to temperature of the material, it changes the infrared heaters to change the temperature of the material and not the temperature of the vessel.

B. The Examiner ignores the method step limitations of claim 21

As noted above, method claim 13 is further limited in claim 21 to the “step of monitoring the temperature of the material to determine the location and existence of voids during curing.” There is no mention or disclosure in Charbonnet that changes of the temperature of the material in the panel could provide any indication of the location and existence of voids during curing. Again,

the Examiner is specifically challenged to identify the column and line number of Charbonnet which contains the teaching of the additional method step set out in Applicants' dependent claim 21.

Error #4. The Examiner fails to provide any "analysis" of his rationale for combining elements taken from the Charbonnet and Whipple references in the manner of Applicants' claims 14 and 17

On page 5, lines 2 and 3, the Examiner admits "Charbonnet does not teach that the infrared device is located outside the vessel." The Examiner also admits on page 5, in lines 19 and 20 that "Charbonnet does not teach that the temperature across the whole of the material is measured." The Whipple reference teaches remote infrared radiation measurement to determine the temperature of material being cooked in a microwave oven. However, there is no allegation that Whipple teaches the portion of claim 13 which is clearly missing in the Charbonnet reference, i.e., "adjusting the temperature of the vessel to maintain a constant curing temperature." In fact, as noted above (the comments relating to independent claims 8 and 13 are herein incorporated by reference), Charbonnet does not adjust the temperature of the vessel to maintain a constant curing temperature. Therefore, even if Whipple did teach locating an infrared device outside the vessel in order to monitor temperature of materials in the vessel, there is still no disclosure of adjusting the temperature of the vessel to maintain a constant curing temperature. Therefore, claim 14 is clearly patentable over the Charbonnet/Whipple combination.

Moreover, the Examiner fails to identify any reason why one of ordinary skill in the art would think to combine Charbonnet and Whipple. Charbonnet does depend upon infrared heaters to heat its moving panels to promote curing of the fiberglass/resin composite mixture. The Examiner apparently does not appreciate that, in a microwave device such as Whipple, the temperature inside the microwave oven does not increase significantly during cooking. In fact, Whipple specifically teaches the submission of cooling air into the oven temperature which "keeps

the chamber walls near ambient temperature (e.g., within a few degrees).” Thus, there is no measurement or adjustment of the temperature of the vessel in order to maintain a constant curing temperature. In fact, Whipple specifically teaches away from maintaining the temperature in the vessel at any constant curing temperature.

Claim 17 specifies monitoring the temperature across the whole of the material. As noted above, while Whipple does suggest measuring the temperature of the object in the chamber (which is being microwaved), this does not render obvious the subject matter of claim 13 from which claim 17 depends, i.e., the claim 13 step of “adjusting the temperature of the vessel to maintain a constant curing temperature.” The temperature of the vessel in Whipple is cooled by the cooling air and has nothing to do with the temperature measurements of the material in the Whipple oven. In fact, the measured temperature in the Whipple oven does not have anything to do with adjusting the temperature of the vessel.

As a consequence, there is no reason to combine Charbonnet and Whipple and even if combined, the invention of independent claim 13 and claim 17 dependent therein is not disclosed.

Error #5. The various additional obviousness rejections are based upon Charbonnet and/or Whipple and/or Handel and/or Schenck and the above comments are herein incorporated by reference

Because the Charbonnet reference fails to disclose adjusting the temperature of the vessel to maintain a constant curing temperature and because Whipple teaches away from any adjustment of the temperature of the vessel based upon any temperature monitoring, there is no support for the obviousness rejections of the various cited dependent claims (claims 16, 18 and 19 over Charbonnet/Schenck, claims 8, 13, 14, 15, 17, 20 and 21 over Handel/Whipple, claims 16 and 18 over Handel/Whipple/Schenck). Accordingly, any further rejection of these independent and dependent claims is respectfully traversed.

Claims 8, 9, 13, 14, 15 and 17 stand rejected under 35 USC §103 as unpatentable over Handel (U.S. Patent 5,345,397) in view of Whipple. The Examiner's admission on page 8, section (a) that "Handel does not teach that the control system comprises an infrared device remote from the material" is very much appreciated. Whipple is not a temperature controlled vessel, although the autoclave of Handel clearly is. While the Examiner uses the phrase "control system" (page 8, lines 3-4), this language is not part of Applicants' independent claim 8. Additionally there is still no reason as to why one of ordinary skill in the art would pick and choose elements from the Handel and Whipple references and then combine them in the manner of Applicants' claims. The Handel and Whipple patents do not operate in the same fields and the Whipple device is not a temperature controlled vessel.

The Examiner has simply failed to meet his burden of providing some reason or rationale for picking and choosing elements from the Handel and Whipple references and then combining them in the manner of Applicants' independent claims 8 and 13 or claims dependent thereon.

SUMMARY

The Examiner has failed to properly support his rejection of a claim (claim 17), failed to give patentable weight to a claim limitation (claim 21), has misunderstood the Charbonnet reference (claims 8 & 13) and has failed to establish a *prima facie* case of obviousness (all claim elements are not shown in the combinations and there is no analysis of any reason for combining references in claims 8, 13-21).

As a result of the above, there is simply no support for the rejection of Applicants' independent claims or claims dependent thereon under 35 USC §102 and/or §103. Applicants respectfully request that the Pre-Appeal Panel find that the application is allowed on the existing claims and prosecution on the merits should be closed.